

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

SMS FINANCIAL J, LLC,

Plaintiff,

v.

Case No. 2:18-mc-19-JES-NPM

CUSTOM PLUMBING OF LEE  
COUNTY, INC.,

Defendant.

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**ORDER**

Before the Court is Plaintiff's Motion to Compel Document Production or in the Alternative for an Order to Show Cause (Doc. 19). No response was filed to the motion and the response time has lapsed.

On October 23, 2019, SMS Financial registered a judgment from the United States Bankruptcy Court in the Northern District of Illinois in favor of it and against Custom Plumbing of Lee County, Inc. in the principal amount of \$107,040.98. (*Id.*; Doc. 1-1, p. 1). To collect on this Judgment, SMS Financial scheduled the deposition of John Myers, president and director of Custom Plumbing. After not appearing for a September 2020 deposition, Myers eventually did appear for a rescheduled February 26, 2021 deposition. However, Myers failed to produce documents

referenced in the Amended Notice of Taking Deposition Duces Tecum. SMS Financial seeks to compel Myers to produce these documents.

In a prior Order (Doc. 16), the Court reviewed the document requests and found them relevant, non-privileged, and proportional to the needs of the case with the exception of request nos. 44 and 46, which SMS Financial deleted. Fed. R. Civ. P. 26(b)(1); (Doc. 16, p. 2 n.2). To be clear and eliminate any possible ambiguity, the prior Order (Doc. 16) required Myers to appear for his deposition and to bring with him the documents requested. The Court will allow Myers one final opportunity to produce documents in his possession, custody, or control that are responsive to the requests in the Notice of Taking Deposition Duces Tecum. If Myers does not have documents responsive to a certain request, he must convey this to SMS Financial.

Accordingly, the Motion to Compel Document Production (Doc. 19) is **GRANTED** and the alternative request for an order to show cause is denied without prejudice. By **May 25, 2021**, Myers will produce to SMS Financial all responsive documents in his possession, custody, or control or notify SMS Financial that he does not have such documents. If Myers fails to comply with this Order, upon motion by SMS Financial, the Court may sanction Myers.

**DONE** and **ORDERED** in Fort Myers, Florida on April 21, 2021.

  
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NICHOLAS P. MIZELL  
UNITED STATES MAGISTRATE JUDGE